

Message Text

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ORIGIN EUR-12

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C O N F I D E N T I A L STATE 215052

E.O. 11652: GDS

TAGS: CGEN, PGOV, GE, GW, BQG

SUBJECT: US-GDR CONSULAR CONVENTION: ADDITIONAL TALKING
POINTS ON "CIRCLE OF PERSONS" APPROACH

REFS; (A) STATE 213663NOTAL; (B) BONN 15215 NOTAL;
(C) STATE 021821; (D) STATE 209824 NOTAL

1. U.S. BONN GROUP REP SHOULD PRESENT FRG COLLEAGUE WITH
NON-PAPER (REF A) AS SOON AS POSSIBLE AND INFORM BONN GROUP
DRAWING ON NON-PAPER AS NECESSARY.

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2. WITH REGARD TO CONCERNS (REF B) ABOUT USE OF TERM
"GDR CITIZEN", WE ARE PROCEEDING ON BASIS THAT GDR, LIKE
ANY OTHER STATE, HAS CITIZENS, A FACT THAT NEITHER FRG NOR
US HAS EVER DENIED. FRG CONCERN, AS EXPRESSED IN FRG
EMBASSY AIDE MEMOIRE OF JULY 18, 1974 AND NON-PAPER OF
OCTOBER 31, 1977, APPEARS TO BE NOT SO MUCH WHETHER THE
TERM "GDR CITIZEN" IS USED BUT HOW THAT TERM IS DEFINED

THOSE PAPERS SPEAK OF "OVERLAPPING" GDR CITIZENSHIP AND GERMAN NATIONALITY AND "CONCURRENT JURISDICTION OF THE TWO STATES". THE 1974 AIDE MEMOIRE ARGUES THAT THE CRITERION FOR DECIDING WHICH JURISDICTION SHOULD BE EXERCISED IS THE WILL OF THE INDIVIDUAL INVOLVED AND, IN THIS REGARD, ONLY CLAIMS AN FRG RIGHT TO EXERCISE SUCH JURISDICTION OVER

"GERMANS WHO WISH TO APPLY TO THIS END TO MISSIONS OF THE FRG". FRG CONCERN APPEARS TO BE THAT, IF WE WERE TO ACCEPT THAT A GDR CITIZEN IS ONE SOLELY DEFINED BY GDR LAW, WE WOULD ACCEPT GDR CONTENTION THAT THERE IS NO "OVERLAPPING" GERMAN NATIONALITY AND, THEREFORE, NO "CONCURRENT" FRG JURISDICTION. OUR TEXT (REF. A) DOES NOT ACCEPT ANY SUCH GDR CLAIM AND IS NOT INCONSISTENT WITH FRG POSITION OR OUR OWN INTERESTS.

3. WE HAVE PREVIOUSLY MADE OUR POSITION ON THIS ISSUE CLEAR TO THE GDR (REF. C), STATING OUR VIEW THAT, ALTHOUGH THE GDR HAS CITIZENS, THERE EXISTS CONCURRENT GDR CITIZENSHIP AND GERMAN NATIONALITY.

4. IF REFERENCE IS MADE TO APPARENT INTERCHANGEABILITY BETWEEN TERMS "CITIZEN" AND "NATIONAL" IN GERMAN LANGUAGE, POINT MAY BE MADE THAT, IN ENGLISH LANGUAGE AND ANGLO-SAXON LAW, THERE IS A CLEAR DIFFERENCE BETWEEN TWO TERMS.

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5. SIMILARLY, THERE IS A DIFFERENCE BOTH IN ENGLISH AND GERMAN BETWEEN TERMS "STATE" AND "NATION". THERE ARE NOT ONLY A NUMBER OF DIVIDED NATIONS (E.G., GERMANY, KOREA) BUT ALSO MANY MULTINATIONAL STATES (E.G., CZECHOSLOVAKIA, YUGOSLAVIA, THE SOVIET UNION). THE FACT THAT WE HAVE RECOGNIZED GDR AS A STATE AND THE FACT THAT THAT STATE HAS CITIZENS IN NO WAY CONFLICTS WITH THE FACT THAT BERLINERS ARE GERMANS AND ENTITLED TO BE RE-

PRESENTED ABROAD BY FRG CONSULAR OFFICIALS.

6. DEPARTMENT DOES NOT WISH TO SPOTLIGHT THIS ISSUE NOR TO PRECIPITATE POSSIBLE FRG OBJECTION. THEREFORE, IN MAKING PRESENTATION TO FRG COLLEAGUE AND TO BONN GROUP, U.S. BONN GROUP REP SHOULD NOT PROCEED BEYOND TALKING POINTS CONTAINED IN NON-PAPER (REF. A). TALKING POINTS IN THIS CABLE ARE CONTINGENCY POINTS TO BE MADE ONLY IF NECESSARY.

7. FYI. WITH REGARD TO PRECEDENT, US-GDR AGREED MINUTE AND DRAFT TEXT OF US-GDR CONSULAR CONVENTION BOTH ALLUDE TO SENDING AND RECEIVING STATE CITIZENS, TERMS FOR WHICH

SUBSTITUTION OF U.S. AND GDR CITIZENS HARDLY SEEMS A
QUANTUM JUMP. MORE IMPORTANTLY AND UNDER NO CIRCUMSTANCES
TO BE REOPENED AT THIS POINT, WE HAVE ALREADY AP-
PARENTLY BITTEN THE BULLET IN US-GDR FISHING AGREEMENT
(GIFA) OF OCTOBER 5, 1976, ARTICLE I OF WHICH REFERS TO
"NATIONALS AND VESSELS OF THE GDR". AT THAT TIME, WE

MADE THE SAME POINTS AS THOSE IN PARA 2 ABOVE EVEN MORE
STRONGLY. THE FRG DID NOT PERSIST IN ITS RATHER WEAK
OBJECTIONS AND HAS NOT RETURNED TO THE ISSUE SINCE.
DEPARTMENT FINDS IT STRANGE THAT GDR HAS NOT YET RE-
FERRED TO GIFA AND DOES NOT WANT TO DRAW ITS ATTENTION
TO THIS POSSIBLE PRECEDENT IN MIDST OF CONSULAR CON-
VENTION PROCESS. CHRISTOPHER
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